



**STATE OF CONNECTICUT**  
**DEPARTMENT OF PUBLIC UTILITY CONTROL**

REGINALD J. SMITH  
CHAIRPERSON


May 7, 1997

The Honorable John D. Dingell, Ranking Member  
Commerce Committee Democratic Office  
564 Ford House Office Building  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Dingell:

Enclosed please find the Connecticut Department of Public Utility Control's responses to the questions contained in your April 10, 1997 letter. The Department appreciates the opportunity to offer comments on the very important issue of electric industry restructuring.

Sincerely,



Reginald J. Smith

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1. Has your Commission or State legislature considered or adopted retail competition?

A Bill (Bill No. 6774) concerning electric restructuring has been introduced in the General Assembly (with the assistance of the CT. DPUC) which would adopt retail competition on a limited basis, beginning July 1, 1999. Under the proposed bill, all customers would be able to choose an electric supplier as of July 1, 2000.

2. Has your state asked Congress to enact legislation mandating retail competition Has it sought Congressional Action to enable or assist it in adopting retail competition? Has it requested or recommended any other type of Congressional action?

Connecticut's position has been that action regarding retail competition is best left to the states to determine appropriate means and time tables. Following a number of years of independent investigation, Connecticut is currently finalizing its own legislation establishing retail electric competition. Although we believe that the vast majority of issues associated with establishing effective retail electric competition are best addressed at the state level, it remains clear that the adequate assessment and mitigation of the adverse environmental effects of creating such competition (example: increased interstate transport of air pollutants) would benefit from a fair and consistent nationwide approach. As retail markets for electricity are established which transcend the traditional intrastate service territories, consistent environmental requirements across the array of suppliers will be necessary to "level the playing field," assuring that the economic benefits of competition are not achieved at the cost of our health or environment. The effective internalization of these externalities is not likely to occur if left to the discretion of individual states. Connecticut's Governor and legislators have consistently supported policy and legislation to address this issue at the federal level.

3. Does your Commission currently have sufficient authority to resolve stranded cost issues in the event Congress enacts legislation providing for retail competition by a date certain?

Bill No. 6774 mandates that the Department of Public Utility Control complete a proceeding not later than October 1, 1998 to identify and determine the value of stranded costs for each electric company in accordance with this Acts provisions.

4. Are there any other areas in which your State currently does not have the necessary authority to address issues arising from federal legislation mandating competition, or repeal of the Public Utility Holding Company Act of 1935 (PUHCA) of the Public Utility Regulatory Policies Act of 1978?

No comments.

5. Would any constitutional issues be raised by federal legislation:
- a. mandating that states choose between adopting retail competition by a date certain and having a federal agency preemptively impose retail competition?
  - b. requiring states to conduct a proceeding on retail competition, reserving to the states discretion not to adopt retail competition if they determine doing so would not be in its consumers best interests?

No comments.

6. From a practical standpoint, what problems would arise if Congress adopted legislation mandating retail competition which did not grandfather prior state action?

No comments.

7. In hearings before the Energy and Power Subcommittee during the last Congress, some witnesses took the position that Congressional legislation mandating retail competition is necessary to protect the interests of small and residential consumers. This was based on the assertion that large industrial customers are able to negotiate lower rates with state utility commissions, and that the incidence of such rate reductions is on the increase.

- a. Are you aware of any study or analysis relevant to your State that supports this conclusion?

No.

- b. Please provide any information you can on the historical relationship between residential and industrial rates, to the extent to which one customer class has subsidized another, and whether or not this trend has altered in recent years.

- 1. Relationship between residential and industrial rates:

Schedule 1, attached, demonstrates the relationship of residential and industrial rates for The Connecticut Light & Power Company and the United Illuminating Company for the years 1990 through 1995. The average cost per kWh was developed from FERC Form 1 data and represents an average of total class sales and revenues.

- 2. Rate class subsidy:

The Department avoids class subsidies through rate design. Although the historic data demonstrates that residential rates have increased while industrial rates have leveled or declined from 1990-1995, this is likely the effect of special contract rates for industrial customers, not cost shifting through rate design.

3. Has the trend in rates altered in recent years?:

Refer to the answer to 2., above.

8. Although electricity rates vary widely within the U.S., they have fallen recently in some parts of the country. Please provide any information you can about rate trends in your State and how they affect various customer classes.

Rates have been stable or have declined slightly in recent years, but remain among the highest in the country. Historically, rates for residential customers have been subsidized by other customer classes and remain so. Some large industrial customers have special contracts in which they receive preferential rate treatment.

9. Some proponents of retail competition hold the view that all electricity resources should be sold at a market price and that state authority to regulate retail rates should be eliminated. How would such a policy affect shareholders and ratepayers? What mechanisms could states or Congress employ to manage these issues? In a restructured electric industry, who should receive the benefits of these low cost resource -- utility ratepayers, utility shareholders or the highest bidder?

The electric utility industry provides several different services including generation, transmission and distribution of electricity. Currently, there is little, if any, viable competition for either transmission or distribution services. Without regulation of these services, the resources that are used in the provision of such services would command very high prices in the market place, since the owners could charge high rates for their use. The generation service market has the potential to be very competitive given an appropriate framework. However, even this market has the existence of market power in many regions of the country. The resources providing generation service would sell at reasonably competitive prices (i.e., reflective of value in a competitive market) though it is hard to imagine that nuclear plants would have many buyers given the great uncertainty surrounding their future performance. In many cases, the prices for embedded generation assets would fall short of the cost incurred in building them (primarily nuclear plants) leaving a shortfall to be absorbed by utility shareholders and/or ratepayers. In a move to competition in services where that is possible, some sharing of gains and/or losses between shareholders and ratepayers is appropriate.

To date the regulatory compact has been that utilities will be given a reasonable opportunity to recover prudently incurred costs and that they receive no more than

a fair return on assets. Taken as a whole, the compact suggests that when transitioning to competition, utilities should be made whole for prudently acquired and operated assets, but any windfall profits on the sale or continued operation of low cost resources be refunded to ratepayers who have consistently provided a full and fair return on the assets to date.

10. Of those states which have adopted retail competition, how many have addressed the issue of “reciprocity” (that is, whether or not the state can bar sellers located in states which have not adopted retail competition from access to its retail markets)? Whose interests does a reciprocity requirement affect? Is a reciprocity requirement the only way to protect those interests, or are there alternatives? Would such a requirement raise constitutional issues?

The proposed restructuring legislation in Connecticut does not currently contain any reciprocity provisions. An earlier version of that bill, however, did contain a provision that required each seller of electricity into the Connecticut market to certify that its generating units meet Connecticut environmental standards. While that provision did not bar access based on a state's adoption of retail competition, it would have prevented access nonetheless.

In this context, an environmental reciprocity requirement would affect the interests of citizens of both states in terms of improved environmental conditions. However, from the DPUC's perspective, a fair and consistent nationwide approach to the assessment and mitigation of adverse environmental effects of retail competition is an alternative to protecting such environmental interests (see answer to Question #2).

The environmental reciprocity provision was ultimately removed for fear of constitutional challenge. It is possible that a reciprocity provision similar to the type posed in the question (states barring sellers located in other states which have not adopted retail competition from access to retail markets) would also run afoul of the Commerce Clause. It is well accepted that the Commerce Clause directly limits the power of states to discriminate against interstate commerce, and thus prohibits economic protectionism that is, by regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors, unless the discrimination is demonstrably justified by a valid factor unrelated to economic protectionism. New Energy Co. of Indiana v. Limbach, 486 U.S. 269 (1988). Reciprocity agreements that would eliminate all transport of the subject product into or out of the offering state are subject to the “strictest scrutiny” and are typically invalidated as facially discriminatory. See Great Atlantic & Pacific Tea Co. v. Cottrell, 424 U.S. 366 (1976), and Sporhase v. Nebraska ex rel. Douglas, 458 US 941 (1982).

11. If Congress were to require "unbundling" of local distribution company services as part of a retail competition mandate, what practical problems might this present to state regulators.

Unbundling could result in the elimination of subsidies between rate classes, resulting in significant increases to some classes, such as residential, and decreases to others.

12. Does your Commission face particular problems in connection with public power or federal power in an increasingly competitive electricity market?

No.

13. How would federal legislation mandating competition by a near term date certain affect funding needs for your Commission? If additional funding were needed, would it be available, and what problems might arise if it were not?

The Connecticut Commission is funded through utility rates (e.g., a portion of each kWh charge). Federal legislation would have to specify that the costs for the Commission could be collected through the distribution charge levied by the monopoly provider on all kWh or make some other provision for assessing the providers of transmission, distribution and energy services to continue funding.

14. Has your Commission considered or adopted securitization plans as a means of providing for recovery of utility stranded assets?

Proposed Bill 6774 enacted by the General Assembly provides that the Department of Public Utility Control shall issue financing orders in order to finance stranded costs. Also, a body politic and corporate to be known as the "Connecticut Utility Financing Authority" is created to handle the issuance of rate reduction bonds

15. There is a wide divergence of opinion as to whether or not PUHCA should be modified or repealed. Given the record level of merger activity, this question may become significant for all state regulators, whether or not they currently have regulatory responsibilities relating to registered holding company activities.

- a. Do you believe PUHCA impedes competition, at the wholesale or retail level? Can "efficient competition" be achieved regardless of whether Congress enacts changes to PUHCA?
- b. Do you believe Congress should modify or repeal PUHCA? If so, why and under what if any conditions?

- c. Should Congress enact legislation to modify the holding in Ohio Power Co. V. FERC, 954 F.2d 779 (D.C. Cir. 1992)?

No comments.